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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,702	01/09/2002	Claudio Cabano	P+TS-33835	6219
116 7590 12/13/2007 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			EXAMINER SHARMA, SUJATHA R	
			ART UNIT 2618	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/890,702

Applicant(s)

CABANO ET AL.

Examiner

Sujatha Sharma

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 and 34-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 34-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive.

2. The applicant argues that the examiner has improperly considered the declaration filed on 7/25/07.

The examiner would like to respectfully disagree and would like to again bring the applicant's attention to MPEP § 2306. Further the Fraccaroli reference and the applicant's invention is directed towards finding members of a common interest group as discussed in the rejection of the claims.

According to MPEP § 2306, the Fraccaroli reference is a U.S. patent or U.S. patent application publication of a pending or patented application that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings.

See MPEP Chapter 2300 for information on initiating interference proceedings. If the reference and this application are commonly owned, the reference may be disqualified as prior art by an affidavit or declaration under 37 CFR 1.130. See MPEP § 718.

3. Further, the applicant argues that the examiner fails to show where the supplied evidence does not support the invention and no factual evidence was provided by the examiner.

The examiner would like to point out that according to See MPEP 2138.06, the burden lies on the applicant to provide sufficient evidence to establish conception and a reduction to practice. The following arguments as per MPEP 2138.06 fail to meet the nexus of evidence to establish conception and a reduction to practice

4. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Fraccaroli [US 2004/0002348] reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

The complete claimed invention was not conceived prior to the date of the Stuart reference.

5. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Fraccaroli [US 2004/0002348] reference to either a constructive reduction to practice or an actual reduction to practice.

An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966). *Kendall v. Searles*, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949) (Diligence requires that applicants must be specific as to dates and facts.). See MPEP 2138.06

6. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Fraccaroli [US 2004/0002348]

Reduction to practice may be an actual reduction or a constructive reduction to practice, which occurs when a patent application on the claimed invention is filed. An actual reduction to practice requires a showing of the invention in a physical or tangible form that shows every element of the count. *Corona v. Dovan*, 273 U.S. 692, 1928 C.D. 252 (1928) (“A process is reduced to practice when it is successfully performed. A machine is reduced to practice when it is assembled, adjusted and used. A manufacture [i.e., article of manufacture] is reduced to practice when it is completely manufactured. A composition of matter is reduced to practice when it is completely composed.” 1928 C.D. at 262-263 (emphasis added).); See MPEP 2138.05

7. Therefore the rejection of the claims 1-32 and 34-53 as discussed in the previous office action mailed on 7/25/07 is considered proper. The newly added claim 54 is addressed in the rejection of the claims below.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an

international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 52,53 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraccaroli [US 2004/0002348].

Regarding claims 52,53 Fraccaroli discloses a method of finding members of a common interest group, said method comprising the steps of:

- providing a database for storing identifying information about each of said members and storing the database in at least one server accessible from within a radio network; See paragraphs 5,10,14,27-29 and 38
- determining when one of said members is in the vicinity of another of said members utilizing a mobile device of the one of said members and a mobile device of the another of said members; See paragraphs 10, 57,58 and 59
- sending said identifying information corresponding to the one of said members to the mobile device of the another of said members when it is determined that the one of said members is in the vicinity of the another of said members; See paragraphs 10, 57,58 and 59
- said mobile device of the one of said members using said identifying information for display to the one of said members for enabling identification of the another of said members by the one of said members; See paragraphs 5,10, 57,58 and 59 where the user's information such as common interest, hair color, gender, age etc is the information displayed for identifying then users in a group.

- the one of said members getting into direct contact with the another of said members by using the displayed identifying information for identifying the another of said members.

See paragraphs 5,10, 57,58 and 59

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4,10-15,29-32,34-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraccaroli [US 2004/0002348] in view of Herz [US 6,571,279].

Regarding claims 1, Fraccaroli discloses a mobile communication matching system.

Fraccaroli further discloses a method to find members of a common interest group with a mobile device, wherein:

- at least one database is built in which a plurality of interest groups are stored, these interest groups comprising users of terminals, the database being stored in at least one server accessible from within a radio network; See paragraphs 10,14,27-29 and 38
- a message being sent to at least one member if he is in the vicinity of another member of a common interest group. See paragraphs 10, 57,58 and 59 so as to enable the identification of the another of said members by the one of said members when the one of said members has never seen the another of said members.

Fraccaroli, however does not disclose a method wherein said message includes graphical image information to enable the visual identification of the another of said members by the one of said members.

Herz, in the same field of endeavor, teaches a method of dating services where the user information includes graphical image information to enable the visual identification of the another of said members by the one of said. See col. 6, lines 16-33 and col. 14, lines 23-67. Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Herz to Fraccaroli in order to allow the user A who believes that he/she shares common interest with user B to engage in collaborative conferencing of user A with user B.

Regarding claim 2, Fraccaroli further discloses a method wherein location determining means are provided that monitor the location of a plurality of members, and wherein said message is prepared by said server if it recognizes on the basis of the results of said location determining means that two members of the same interest group are in each other's vicinity. See paragraphs 10,14,27-29,38, 57-59.

Regarding claim 3, Fraccaroli further discloses a method wherein said location determining means determine the location of members through signals from a location determining satellite. See paragraph 37.

Regarding claim 4, Fraccaroli discloses a method wherein said location determining means determine the location of members through signals from a plurality of base stations in the radio network. See paragraph 36.

Regarding claims 5-7, Fraccaroli and Herz disclose a method wherein said message is sent as a message signal. See paragraphs 57-59.

However they do not explicitly disclose a method wherein the message is sent as a SMS or USSD or a GPRS message.

However, these are standard protocols that are well known in the art for message delivery.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to use one of these standard protocols available for delivering messages.

Regarding claims 10,11 Fraccaroli discloses a method wherein the user controls the triggering of the communication between the users . See paragraphs 51, 54.

Regarding claim 12, Fraccaroli further discloses a method wherein at least certain mobile devices contain a close-range contactless interface, and wherein these mobile devices send said message over said contactless interface as soon as they find another mobile device in the vicinity belonging to a member of a common interest group. See paragraphs 8,59.

Regarding claims 13-15, Fraccaroli further discloses a method wherein the member can self-register in an interest group with their mobile devices. See paragraph 49.

Regarding claims 29,30, Fraccaroli discloses a method of one of the preceding claims, wherein the maximum distance between the members of a common interest group is determined by the manager or said member of said interest group in order to send said message. See paragraph 51,54.

Regarding claims 31,32 Fraccaroli discloses a method wherein certain members temporarily prevent messages from being sent to them about the presence of members of common interest groups. See paragraphs 51,54.

Regarding claim 34, Fraccaroli further discloses a method wherein said message contains the telephone number of said nearby member. See paragraph 57.

Regarding claims 35,36, Fraccaroli further discloses a method wherein said telephone number is not displayed. See paragraph 58.

Regarding claims 37,39 Fraccaroli further discloses a method wherein said message contains an identification of said participant that is necessary for a connection over the close-range contactless interface. See paragraphs 8,59.

Regarding claim 38, Fraccaroli further discloses a method wherein said close-range contactless interface is a Bluetooth interface. See paragraph 8, 59.

Regarding claims 40,42 Fraccaroli discloses a mobile communication matching system.

Fraccaroli further discloses a method to find members of a common interest group with a mobile device, wherein:

- at least one database is built in which a plurality of interest groups are stored, these interest groups comprising users of terminals, the database being stored in at least one server accessible from within a radio network; See paragraphs 10,14,27-29 and 38
- location determining means that two members of the same interest group are in each other's vicinity. See paragraphs 10,14,27-29,38, 57-59.
- means for determining pre-defined distance between the members of a common interest group in order to send said message. See paragraph 51,54.

a message being sent to at least one member if he is in the vicinity of another member of a common interest group if they are within the pre-determined distance to enable the identification of the another of said members by the one of said members when the one of said members has never seen the another of said members. See paragraphs 10, 57,58 and 59

Fraccaroli, however does not disclose a method wherein said database includes graphic image information for some users and the message includes graphical image information to enable the visual identification of the another of said members

Herz, in the same field of endeavor, teaches a method of dating services where the user information includes graphical image information to enable the visual identification of the another of said members by the one of said. See col. 6, lines 16-33 and col. 14, lines 23-67

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Herz to Fraccaroli in order to allow the

user A who believes that he/she shares common interest with user B to engage in collaborative conferencing of user A with user B.

Regarding claim 43, Fraccaroli further discloses a method wherein the message criterion is an acceptable time period. See paragraphs 14,54.

Regarding claims 44,45 Fraccaroli further discloses a method wherein said message criterion is an acceptable location. See paragraph 14.

Regarding claims 46,47, Fraccaroli further discloses a method wherein said message criterion is a permission provided by the another of said members to send/ receive said message. See paragraphs 57,59.

Regarding claims 48, Herz further discloses a method, wherein said user profile which includes graphical image information has been previously stored in said database. See col. 5, line 35 – col. 6, line 33 and col. 14, lines 23-67

Regarding claims 49, Herz further discloses a method wherein said graphical image information of the user. See col. 5, line 35 – col. 6, line 33 and col. 14, lines 23-67

Regarding claims 50, Herz further discloses a method, wherein said user profile which includes graphical image information has been previously stored in said database. See col. 5, line 35 – col. 6, line 33 and col. 14, lines 23-67

Regarding claims 51, Fraccaroli discloses a method for finding members of a common interest group comprising the steps of:

- at least one database is built in which a plurality of user profiles are stored, the database being stored in at least one server accessible from within a radio network; See paragraphs 10,14,27-29 and 38
- determining when one member if he is in the vicinity of another member of a common interest group and sending an identification information such as common interest, hair color, gender etc. See paragraphs 5,10, 57,58 and 59 so as to enable the identification of the another of said members by the one of said members when the one of said members has never seen the another of said members.
- said mobile device of the one of said members displaying said profile information of the another of said members for enabling identification of the another of said members by the one of said members. See paragraphs 5,10, 57,58 and 59

Fraccaroli, however does not specifically disclose a method wherein said user profile includes graphical images of the users and transmitting the graphical image of one user to the other user in order to enable the visual identification of the another of said members by the one of said members.

Herz, in the same field of endeavor, teaches a method of dating services where the user information includes graphical image information to enable the visual identification of the another of said members by the one of said. See col. 6, lines 16-33 and col. 14, lines 23-67

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Herz to Fraccaroli in order to allow the user A who believes that he/she shares common interest with user B to engage in collaborative conferencing of user A with user B.

Regarding claim 54 Fraccaroli discloses a method of finding members of a common interest group, said method comprising the steps of:

- providing a database for storing identifying information about each of said members and storing the database in at least one server accessible from within a radio network; See paragraphs 5,10,14,27-29 and 38
- determining when one of said members is in the vicinity of another of said members utilizing a mobile device of the one of said members and a mobile device of the another of said members; See paragraphs 10, 57,58 and 59
- sending said identifying information corresponding to the one of said members to the mobile device of the another of said members when it is determined that the one of said members is in the vicinity of the another of said members; See paragraphs 10, 57,58 and 59
- said mobile device of the one of said members using said identifying information for display to the one of said members for enabling identification of the another of said

members by the one of said members; See paragraphs 5,10, 57,58 and 59 where the user's information such as common interest, hair color, gender, age etc is the information displayed for identifying then users in a group.

- the one of said members getting into direct contact with the another of said members by using the displayed identifying information for identifying the another of said members.

See paragraphs 5,10, 57,58 and 59

Fraccaroli, however does not specifically disclose a method wherein said user profile includes graphical images of the users and transmitting the graphical image of one user to the other user in order to enable the visual identification of the another of said members by the one of said members.

Herz, in the same field of endeavor, teaches a method of dating services where the user information includes graphical image information to enable the visual identification of the another of said members by the one of said. See col. 6, lines 16-33 and col. 14, lines 23-67

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Herz to Fraccaroli in order to allow the user A who believes that he/she shares common interest with user B to engage in collaborative conferencing of user A with user B.

11. Claims 8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraccaroli [US 2004/0002348] and Herz [US 6,571,279] in view of Jones [US 6,763,300].

Regarding claims 8,9, Fraccaroli as treated in claim 1, discloses all the limitations as claimed. He further discloses a method wherein the handset has browsing capability. However he does not

explicitly disclose a method wherein the said message between the users is an IP packet or an email message.

Jones, in the same field of endeavor, teaches a method wherein the said message between the users is an IP packet or an email message. See col. 35, lines 22-35 and lines 55-56.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teaching of Jones to modified Fraccaroli in order to provide enhanced services to the user.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraccaroli [US 2004/0002348] and Herz [US 6,571,279] in view of Sautter [US 6,233,248].

Regarding claim 16, Fraccaroli and Herz disclose all the limitations as claimed. However they do not disclose a method wherein the member can register with a voice message.

Sautter, in the same field of endeavor, teaches a method where the user can register using voice contact. See col. 36, lines 23-29.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teaching of Sautter to modified Fraccaroli since it is advantage of forming conference calls thus providing enhanced services to the user.

13. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraccaroli [US 2004/0002348] and Herz [US 6,571,279] in view of Mysore [US 6,304,558].

Regarding claim 17, Fraccaroli and Herz disclose all the limitations as claimed. However he does not disclose a method wherein the members can register with an interest group by Internet.

Mysore, in the same field of endeavor, teaches a method where the user can register using Internet. See col. 4, lines 49-61.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teaching of Sautter to modified Fraccaroli since it has the advantage of forming chat room/ talk group thus providing enhanced services to the user.

14. Claim 18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraccaroli [US 2004/0002348] and Herz [US 6,571,279] in view of Albanese [US 6,002,768].

Regarding claim 18, Fraccaroli and Herz disclose all the limitations as claimed. However they do not disclose a method wherein third parties register members with an interest group.

Albanese, in the same field of endeavor, teaches a method wherein third parties register members with an interest group. See col. 1, lines 55-59, col. 4, lines 1-37, col. 5, lines 15-67, col. 9, lines 27-36

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teaching of Albanese to modified Fraccaroli in order to provide a communication session in a decentralized manner.

Regarding claims 19,20 Albanese further discloses a method wherein membership with a group is certified. See col. 1, lines 55-59, col. 4, lines 1-37, col. 5, lines 15-67, col. 10, lines 20-55

Regarding claims 21,22 Albanese discloses a method wherein third parties file a registration certificate in said database. See col. 5, lines 15-67

Regarding claims 23,24 Albanese further discloses a method wherein at least certain members are only registered temporarily in an interest group. See col. 11, lines 61-64

Regarding claim 25, Albanese further discloses a method wherein said database is managed by the operator of said radio network, and wherein the registration with a group and/or the sending of said message is billed by said operator. See col. 9, lines 44-62

Regarding claim 26, Albanese further discloses a method wherein said database is managed by third parties. See col. 1, lines 55-59, col. 4, lines 1-37, col. 5, lines 15-67, col. 10, lines 20-55

Regarding claim 27, Albanese further discloses a method wherein said message is electronically signed. See col. 7, lines 5-35.

Regarding claim 28, Albanese further discloses a method wherein said message is electronically encrypted. See col. 7, lines 5-35.

15. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraccaroli [US 2004/0002348] and Herz [US 6,571,279] in view of Biliris [US 6,047,272].

Regarding claim 41 Fraccaroli and Herz disclose a mobile communication matching system. Fraccaroli further discloses a method to find members of a common interest group with a mobile device, wherein:

- at least one database is built in which a plurality of interest groups are stored, these interest groups comprising users of terminals and said, the database being stored in at least one server accessible from within a radio network; See paragraphs 10,14,27-29 and 38
- a message containing physical identification characteristics being sent to at least one member if he is in the vicinity of another member of a common interest group. See paragraphs 5,10, 57,58 and 59

Fraccaroli, however does not disclose a method wherein said database includes graphic image information for some users and the message includes graphical image information to enable the visual identification of the another of said members

Herz, in the same field of endeavor, teaches a method of dating services where the user information includes graphical image information to enable the visual identification of the another of said members by the one of said. See col. 6, lines 16-33 and col. 14, lines 23-67

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Herz to Fraccaroli in order to allow the

user A who believes that he/she shares common interest with user B to engage in collaborative conferencing of user A with user B.

However, Fraccaroli and Herz fail to disclose a method of billing a party for said sending of said message.

Biliris, in the same filed of endeavor, teaches a method of billing a sending party for the initiated connection. See col. 3, lines 59 – col. 4, line 2.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teaching of Biliris to modified Fraccaroli to provide enhanced billing and routing of messages.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sujatha Sharma whose telephone number is 571-272-7886. The examiner can normally be reached on Mon-Fri 7.30am - 4.00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on 571-272-4177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Sujatha Sharma
September 26, 2007